

Table of Contents

CHAPTER 2	<u>1</u>
Consular and Judicial Assistance and Related Issues	<u>1</u>
A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE	<u>1</u>
1. Federal Rules of Criminal Procedure Updated to Facilitate Compliance with Consular Notification and Access Obligations	<u>1</u>
2. State Actions Relating to <i>Avena</i>	<u>2</u>
B. CHILDREN	<u>4</u>
1. Adoption	<u>4</u>
a. <i>Pre-Adoption Immigration Review (“PAIR”)</i>	<u>4</u>
b. <i>Report on Intercountry Adoption</i>	<u>4</u>
c. <i>Implementation of Intercountry Adoption Universal Accreditation Act</i>	<u>4</u>
2. Abduction.....	<u>4</u>
a. <i>2014 Hague Abduction Convention Compliance Report</i>	<u>4</u>
b. <i>International Child Abduction Prevention and Return Act</i>	<u>5</u>
c. <i>Hague Abduction Convention Litigation</i>	<u>5</u>
d. <i>Hague Abduction Convention Partners</i>	<u>5</u>
Cross References.....	<u>6</u>

CHAPTER 2

Consular and Judicial Assistance and Related Issues

A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE

1. Federal Rules of Criminal Procedure Updated to Facilitate Compliance with Consular Notification and Access Obligations

The United States government updated the Federal Rules of Criminal Procedure in 2014 to help facilitate compliance with its consular notification and access obligations. The updated rules took effect December 1, 2014. A December 2, 2014 State Department press statement, available at www.state.gov/r/pa/prs/ps/2014/12/234612.htm, describes the key changes as follows:

Pursuant to these changes, a defendant who is not a United States citizen and who has been charged with a federal crime shall be informed by a federal magistrate judge at the initial appearance that he or she “may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant’s country of nationality that the defendant has been arrested.”

The updates to the Federal Rules of Criminal Procedure are part of a broader effort to achieve compliance with consular notification and access obligations, including through training to law enforcement, prosecutors, and judges. See *Digest 2011* at 10-11 and *Digest 2010* at 13-22 describing some of these efforts.

2. State Actions Relating to *Avena*

As discussed in *Digest 2013* at 27-29, the U.S. Department of State requested that Texas authorities provide Edgar Arias Tamayo, a Mexican national named in the International Court of Justice's *Avena* decision, with the judicial "review and reconsideration" mandated by the ICJ decision and/or delay the execution until he is provided with such review and reconsideration. For further background on efforts to facilitate compliance with the Vienna Convention on Consular Relations, as well as the ruling of the ICJ in *Avena*, see *Digest 2004* at 37-43; *Digest 2005* at 29-30; *Digest 2007* at 73-77; *Digest 2008* at 35, 153, 175-215; *Digest 2011* at 11-23; *Digest 2012* at 15-16; and *Digest 2013* at 26-29. On January 22, 2014, the State of Texas executed Mr. Tamayo without conducting further review and reconsideration of his case in accordance with *Avena*. On January 23, 2014, the State Department issued the following press statement (available at www.state.gov/r/pa/prs/ps/2014/01/220546.htm) expressing regret at the execution.

* * * *

On January 22, 2014, the State of Texas executed Edgar Arias Tamayo, following his conviction for the murder of a Houston, Texas police officer in 1994. Mr. Tamayo was a Mexican national subject to the International Court of Justice's *Avena* decision. The Court in *Avena* found that the United States had failed to provide consular notification and access to 51 Mexican nationals, including Mr. Tamayo, as required under the Vienna Convention on Consular Relations (VCCR). The United States, like 170 other countries around the world, is party to the VCCR. The VCCR ensures that individuals who are detained in a foreign country can receive access to and assistance from their embassies and consulates overseas in order to navigate foreign legal systems or otherwise get the assistance that they need. In *Avena*, the International Court of Justice ordered the United States to provide "review and reconsideration" of the 51 Mexican nationals' convictions and sentences to determine whether they were actually prejudiced by not having been afforded consular notification and access in accordance with the VCCR.

The United States' compliance with our international obligations under *Avena* is critical to our ability to ensure consular access and assistance for our own citizens who are arrested or detained by foreign governments, as well as to maintain cooperation from foreign governments on a broad range of law enforcement and other issues. The Department of State had communicated these important interests to Texas authorities with respect to Mr. Tamayo's case, including urging Texas to delay Mr. Tamayo's execution in order to provide an opportunity for the review of Mr. Tamayo's conviction and sentence required under the *Avena* decision. The Department regrets Texas' decision to proceed with Mr. Tamayo's execution without that review and reconsideration, but remains committed to working to uphold our international obligations under the *Avena* judgment. This case illustrates the critical importance of Congress passing the Consular Notification Compliance Act, which would provide an additional mechanism for the United States to meet our international obligations.

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The State of Texas executed another of the Mexican nationals named in *Avena*, Ramiro Hernandez Llanas, on April 9, 2014. The United States provided the following statement regarding the execution in response to the European Union at the Organization for Security and Cooperation in Europe (“OSCE”) in Vienna on April 10, 2014. Gary Robbins, Deputy Chief of Mission for the U.S. Mission to the OSCE, delivered the statement, which is available at http://osce.usmission.gov/apr_10_14_dp.html.

* * * *

Mr. Hernandez was one of 51 Mexican nationals named in the International Court of Justice’s *Avena* decision, wherein the court held that the United States had failed to comply with the consular notification and access provisions of the Vienna Convention on Consular Relations (VCCR). With respect to Mr. Hernandez, the International Court of Justice found that he was not informed of his option to have the Mexican Consulate notified of his arrest in accordance with the VCCR. The International Court of Justice ordered the United States to provide “review and reconsideration” of the 51 Mexican nationals’ convictions and sentences in order to determine whether they were actually prejudiced by the VCCR violations identified in the decision.

The United States takes its international obligations under the *Avena* judgment and the VCCR seriously and has communicated these important interests to Texas authorities. The Department of State urged Texas to take into consideration the *Avena* judgment and the VCCR violation in determining whether to grant a reprieve of Mr. Hernandez’s execution and remains committed to working to uphold the United States’ international obligations under the *Avena* judgment and under the VCCR.

The United States respects the concerns of the European Union regarding the imposition of the death penalty in this case, but reminds the European Union that the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, provides for imposition of the death penalty for the most serious crimes when carried out pursuant to a final judgment rendered by a competent court, and accompanied by appropriate procedural safeguards and the observance of due process. This includes the right to seek pardon or commutation of sentence in all cases. The imposition of the death penalty, in appropriate circumstances, has also been upheld by the United States Supreme Court.

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B. CHILDREN**1. Adoption****a. *Pre-Adoption Immigration Review (“PAIR”)*****b. *Report on Intercountry Adoption***

In March 2015, the State Department released its Annual Adoption Report to Congress. The report is available at

http://travel.state.gov/content/dam/aa/pdfs/fy2014_annual_report.pdf. The report includes several tables showing numbers of intercountry adoptions by country during fiscal year 2014, average times to complete adoptions, and median fees charged by adoption service providers.

c. *Implementation of Intercountry Adoption Universal Accreditation Act*

As discussed in *Digest 2012* at 19, the Intercountry Adoption Universal Accreditation Act of 2012 (“UAA”) was enacted to extend the safeguards provided by accreditation and oversight of adoption service providers (“ASPs”) established in the Intercountry Adoption Act of 2000 (“IAA”) and the IAA’s enforcement mechanisms to U.S. adoptive parents, foreign children, and birth families involved in intercountry adoption that do not fall within the scope of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (“Convention”). On July 14, 2014, the UAA took effect and the Department of State issued an interim, amended rule on the accreditation and approval of adoption service providers in intercountry adoptions, reflecting the requirement of the UAA that Convention standards apply in non-Convention cases, known as “orphan” cases in the INA. The interim rule also revised the accreditation rule by referring to Department of Homeland Security (“DHS”) Convention home study regulation.

2. Abduction**a. *2014 Hague Abduction Convention Compliance Report***

In April 2014, the Department of State submitted to Congress its Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Abduction Convention” or “Convention”) pursuant to 42 U.S.C. § 11611. The report evaluates compliance by treaty partner countries with the Convention. The Convention provides a legal framework for securing the prompt return of wrongfully removed or retained children to the country of

their habitual residence where a competent court can make decisions on issues of custody and the child's "best interests." The compliance report identifies the Department's concerns about those countries in which implementation of the Convention is incomplete or in which a particular country's executive, judicial, or law enforcement authorities do not appropriately undertake their obligations under the Convention. The 2014 report, covering the period January 1, 2013 through December 31, 2013, identified Costa Rica, Guatemala, and Honduras as "Not Compliant with the Convention" and named the Bahamas and Brazil as states demonstrating "Patterns of Noncompliance." The report is available at <http://travel.state.gov/content/dam/childabduction/complianceReports/2014.pdf>

b. *International Child Abduction Prevention and Return Act*

The United States enacted a new law in 2014, the Sean and David Goldman International Child Abduction Prevention and Return Act ("ICAPRA"). Pub. L. No. 113-150, 22 U.S.C. 9101 note. ICAPRA creates additional reporting requirements for the State Department's annual Hague Abduction Convention compliance report and calls on the Department to initiate a process to develop and enter into bilateral arrangements, as appropriate, with certain countries with which the United States has not partnered under the Convention. The law also requires actions by the Secretary of State in response to patterns of noncompliance in cases of international child abductions. See "Compliance Information," on the International Parental Child Abduction page of the Bureau of Consular Affairs at <http://travel.state.gov/content/childabduction/english/legal/compliance.html>.

c. *Hague Abduction Convention Litigation*

See Chapter 15.C. for a discussion of developments in 2014 Hague Abduction Convention cases in which the United States participated.

d. *Hague Abduction Convention Partners*

On January 27, 2014, the United States Embassy in Japan issued a statement welcoming Japan as a Hague Abduction Convention Partner. Japan became the 91st Contracting Party to the Hague Abduction Convention. See Hague Conference website at www.hcch.net/index_en.php?act=events.details&year=2014&varevent=344. The January 27 statement by the United States is available at <http://japan.usembassy.gov/e/p/tp-20140127-02.html> and is excerpted below.

* * * *

The United States welcomes Japan's formal declaration to the Dutch Foreign Ministry on January 24 that Japan has ratified the Hague Abduction Convention. The Convention will enter into force between the United States and Japan on April 1, 2014.

We applaud the work of all those in Japan who have made the implementation of the Convention possible. [U.S.] Ambassador [to Japan Caroline] Kennedy stated, "I commend Japan for taking this final step allowing full domestic implementation of the Hague Convention. This Convention is a very important tool to resolve international parental child abductions. The United States also looks forward to continued progress, with the help of our Japanese counterparts and in the spirit of the Hague Convention, to resolve existing cases of children brought to Japan without the permission of both parents."

* * * *

The 1980 Hague Convention on the Civil Aspects of International Child Abduction is an international treaty that provides a legal framework for securing the prompt return of wrongfully removed or retained children, bringing them back to their country of habitual residence where a competent court can make decisions on issues of custody and the child's best interests. The Convention also secures the effective rights of parental access to a child. On April 1 the United States will welcome Japan as its 73rd partner under the Convention.

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Cross References

Diplomatic relations, **Chapter 9.A.**

Hague Abduction Convention cases, **Chapter 15.B.**